

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**CASE NO. A-6530
PETITION OF NICHOLAS ALTEN**

**OPINION OF THE BOARD
(Opinion Adopted July 19, 2017)
(Effective Date of Opinion: July 28, 2017)**

Case No. A-6530 is an application for a variance needed to allow construction of a proposed covered porch and basement addition. The proposed construction requires a variance of 15.67 feet, as it is within 14.33 feet of the side street lot line setback. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B.2.

The Board held a hearing on the application on July 19, 2017. Petitioner Nicholas Alten appeared pro se at the hearing, in support of the application. Linda Martz, whose property abuts the subject property to the east, and Jan Danis, whose property abuts the subject property to the north, also appeared at the hearing.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 28, Block 23, Glen Echo Heights Subdivision located at 5201 Wissioming Road, Bethesda, Maryland, 20816, in the R-90 Zone.
2. The subject property has an area of 12,010 square feet. It is a five-sided corner lot located on the northeast side of the intersection of Wissioming and Madawaska Roads. The two roads intersect at an angle, and Wissioming bends in front of the subject property, resulting in the subject property having a shape that resembles a rectangle with a truncated corner, described in the Justification Statement as follows:

The lot is on a corner lot and the SW corner is cut by the intersection of Wissioming and Madawaska. This corner pushes the setback line into the existing building.

See Exhibits 3, 4(b) and 7.

3. The Justification Statement describes the existing house and proposed construction as follows:

The design calls for the existing basement to have proper egress – it currently does not. The design also calls for a front porch to connect the driveway to the front door. Currently there is no easy way to get from the driveway to the front door. Additionally there is a portion of the original house already in the front yard setback due to the shape of the lot and the proposed design incorporates the existing house and as a result a portion of the proposed work would fall into the building set back.

* * * *

Specifically we would be 7' 10" beyond the building setback at the SW corner. There would be 58 sf of basement beyond the setback.

* * * *

Specifically we would be 5' 8" beyond the building setback at the SW corner. There would be 52 sf of porch beyond the setback.

The nature of the lot shape means that most of the plans comply with the setback requirements, however in the SW corner the shape of the lot there would be 58 sf of basement beyond the building set back line and 52 sf of front porch in the set back.

* * * *

The Glen Echo Heights neighborhood is transitioning and the existing house will conform more close[ly] to the immediate neighbors – traditional homes with a front porch.

* * * *

The petitioner submits that the unusual shape of the lot impacts the reasonable use and enjoyment of the house and safety for the basement. The minimal encroachment into the setback will greatly enhance the safety of the basement and create a more welcoming house.

See Exhibit 3.

4. The Justification Statement further asserts that the proposed construction uses an existing legal nonconforming structure, as follows:

The existing building has a portion already in the setback. The existing house (original basement and first floor) was constructed in 1950 in the setback – the SW corner. There was a renovation to the property (estimated 1980's) and a second floor was constructed above the original house location and the house was extended to the north.

See Exhibit 3. The Petitioner's neighbor to the east testified at the hearing that the architect who did the 1980's addition won awards for his work.

5. At the hearing, the Petitioner testified that the subject property is a corner lot with two front yards. He testified that the actual "corner" of the property is cut off by Wissioming Road, and that there is a five to six foot change in grade from the street to the yard. The Petitioner testified that the existing house is built over the original house, and that the zoning of the property had been changed. He testified that the southwest corner of the existing house encroaches into the setback, and that the existing basement is unusable. The Petitioner then testified that he intends to extend the basement, which he testified is located under the southern third of the structure and was original to the house, to install an egress window well, explaining that this was needed for safety purposes and to let in natural light. He testified that with the egress window well, the basement will encroach approximately 58 square feet into the setback. The Petitioner further testified that the proposed front porch would encroach approximately 52 square feet into the setback. In response to a Board question asking if the proposed construction would have been an issue if the property had a conventional corner (i.e. did not have a truncated corner), the Petitioner answered that it would not, and testified that the shape of the lot necessitated the requested variance. In response to a question from his neighbor to the north, who asked if the basement egress window would be under the porch, the Petitioner testified that it would be in the flower bed. See Exhibit 9(b).

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

Section 59-7.3.2.E.2.a.ii. - the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the subject property has a unique, five-sided shape with a truncated "corner" that constrains its buildable envelope. The Board further finds that as shown on Exhibit 4(a), the existing home already encroaches into the reduced setback that results from the truncated corner, and thus the Board finds that the proposed development uses an existing nonconforming structure. The Board finds that these circumstances constitute an extraordinary condition that is peculiar to this property. See Exhibits 4(a) and (b).

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

Per SDAT, the Petitioner purchased this property in 2017, and thus is not responsible for the shape of this lot.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that as described in the Justification Statement and by the Petitioner, the requested variance would allow an additional encroachment into the setback over that posed by the existing house. The Board finds that this encroachment is the minimum necessary to allow the proposed improvements to the existing house and to overcome the practical difficulty that full compliance with the setbacks imposed by Zoning Ordinance would cause because of the unusual shape of this lot.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to proceed with the proposed construction is consistent with the residential uses contemplated by the Bethesda Chevy Chase Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the proposed addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board cites the Justification Statement for its assertion that the existing house "will conform more close[ly] to the immediate neighbors," and further notes that both abutting neighbors appeared at the hearing, and while they asked questions, neither testified in opposition to the grant of this variance.

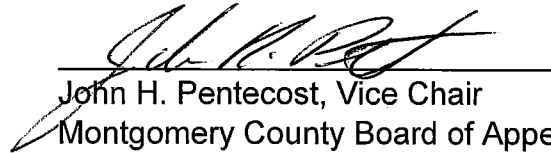
Accordingly, the requested variance of 15.67 feet from the side street lot line setback is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony and exhibits of record to the extent that such testimony and evidence are mentioned in this opinion; and

2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Vice Chair, seconded by Edwin S. Rosado, with Stanley B. Boyd and Bruce Goldensohn in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


John H. Pentecost, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 28th day of July, 2017.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.